



DEPARTMENT OF THE ARMY
HEADQUARTERS, 39TH BRIGADE SUPPORT BATTALION
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HAZEN, ARKANSAS 72064

NGAR-39th BSB-CDR

22 August 2016

MEMORANDUM THRU Colonel Jason Carter, Judge Advocate General, Arkansas National Guard, Camp Robinson, North Little Rock, Arkansas 72199-9600

MEMORANDUM FOR Major General Mark H. Berry, The Adjutant General, Arkansas National Guard, Camp Robinson, North Little Rock, Arkansas 72199-9600

SUBJECT: Response to Findings and Recommendations for Army Regulation (AR) 15-6, Arkansas National Guard, Training Accident, Fatality during Annual Training, Fort Chaffee, Arkansas

1. As the Battalion Commander, I acknowledge that I am responsible for everything good or bad that happens in my unit, even things out of my control. Due to my rank and position, I accept responsibility for SGT Cline's death, and I will live with that forever. However, I do not believe I was negligent in my duties as supported by the evidence in this rebuttal. In making your decision as to how to hold me responsible, I ask that you take into account my previous service record and the future contributions I can make for the Guard (Respondent Exhibit A).¹ I hope you will see that my actions in this tragic event were appropriate and reasonable, and should not result in a career-ending administrative action.

2. First, the Investigating Officer (IO) determined that I signed a deficient Deliberate Risk Management (DRM) form (IO Exhibit 16). I agree with this. The DRM inaccurately assessed the initial risk as Medium and it should have been "High." The DRM listed several risk mitigation measures, but it did not include all of the measures we planned to take to mitigate the risk of heat injury. The residual risk was assessed as "Low", and it should have been "Medium." I acknowledge these oversights. However, the fact that I failed to have 2LT [REDACTED] correct this form, must not overshadow the actual proactive and reactive risk mitigation measures that actually took place. I believe this to be a matter of form over substance.

¹ Most recent OER ending 1 June 2016 is pending completion and is with [REDACTED]

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3. Proactive Measures

- a. Planned for a Safety NCO be assigned to each fighting position and each QRF team. (IO Exhibit 6)
- b. Planned for O/C/T coverage to augment our Safety NCOs with ten (10), 3rd party, expert, officers and NCOs that are trained to provide oversight of training events such as this. Among these individuals was MSG [REDACTED] a 68W veteran medic that would directly supervise the medics' actions. (IO Exhibit 6, 44)
- c. Planned for six medics and two Ambulances to be on the range when only one of each was required. (IO Exhibit 26, 27, and 28)
- d. Personally observed the Platoon Leaders' OPORD Briefs on 13 June 2016 to ensure the plan was communicated properly and effectively. (IO Exhibit 31)
- e. Directed that IOTVs would not be worn during the dry fire portion of the range. (Confusion pertaining to the uniform will be addressed later, but this uniform decision was made the evening of 13 June 2016 (Exhibit 91) as a heat injury prevention measure)
- f. Provided a hot breakfast on the range with Gatorade as opposed to just providing an MRE. (Exhibit 93)
- g. Planned for water and Gatorade to be available on the range throughout the day, to include a scheduled resupply (Page 14 of IO Report)
- h. The Battalion's School-trained Safety Officer, MAJ [REDACTED] who has much experience running live-fire ranges, was assigned as the Assistant OIC of the Range in order to mentor 2LT [REDACTED] and to provide his qualified Safety Officer perspective to the range operations. (IO Exhibit 6)
- i. Conducted a range recon and rehearsal on 13 June 2016 with all key leaders, Range Safeties and support personnel to ensure everyone clearly understood the plan and the environment. (IO Exhibit 6)
- j. Planned for senior leadership to be present and involved the entire day (Exhibit 44, 93)

4. Reactive Measures

- a. Maintained an adequate Work/Rest cycle. ATP 5-19, Risk Management, lists Marksmanship Training as "Easy Work" and requires Work/Rest cycle of 50 minutes of work/10 minutes of rest. Statements demonstrate we exceeded this requirement (IO Exhibit 86, 31, 30, 92).
- b. Allowed Soldiers to remove their gear during breaks (Respondent Exhibits B, C, and D)
- c. Called to expedite the resupply of ice and Gatorade. Conducted an additional resupply of ice and Gatorade. (IO Exhibit 43)
- d. Made a command decision to not require IOTVs during the Blank Fire iteration (IO Exhibit 91, 93, 30)

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- e. Stopped training after three heat casualties to reassess whether we should continue.

5. The evidence that both the proactive and reactive steps taken for Range 100 were sufficient are found in the statements of numerous, unbiased, well-trained observers. (Respondent Exhibit B, C, and D) In his statement to the IO (IO Exhibit 92), the Brigade Safety Officer, CW2 [REDACTED], stated that he observed "no immediate risks" during his two plus hour visit to the range. Mr. [REDACTED] observations included speaking to small groups of Soldiers, NCOs and the command group and he never heard or observed anything to suggest the command was not taking adequate steps regarding the heat. In addition to Mr. [REDACTED] there were over a dozen O/C/Ts and safety NCOs present, who all witnessed the command's proactive and reactive measures.

6. To say "39th BSB leadership and staff did not adequately identify the hazards associated with training in the hot weather environment" simply because I approved a deficient DRM prepared by a Second Lieutenant is simply not true. My staff and I were well aware of the heat and the risk of heat injuries. We had been working in those conditions for over a week to include a four-day FTX and planned for the proactive measures listed above. Considering the exhaustive amount of safety measures that actually took place, I do not believe the deficient risk management form had any causal effect on our heat casualties on 14 June 2016.

7. Secondly, the IO claims battalion and company leadership failed to comply with some specific requirements listed in ALARACT 042/2016, which was published on 18 May 2016. There is no evidence that this ALARACT was ever disseminated to the 39th BSB through any State or Brigade OPORD, a State or Brigade Policy Letter or any other means. Having since been made aware of the ALARACT, I would like to point out that we were following many of the directed heat injury prevention methods listed in the message through our own risk management processes. However, the specific requirements to "develop a written heat stress prevention policy" and to "immediately re-evaluate all unit personnel and mitigation actions when any heat illness occurs" were never disseminated nor discussed in any State or Brigade planning meeting the 39th BSB attended. Even without knowledge of the requirement, I believe the evidence shows that we were constantly re-evaluating all unit personnel and mitigation actions throughout the day, both before and after our heat casualties. (Respondent Exhibits B, C, D)

8. The IO highlights confusion pertaining the uniform of the day. The uniform of the day was Helmet, FLC, Camelback, gloves, and eye protection until we moved into the Blank Fire iteration at which point we would add IOTVs. I made this decision known the evening of 13 June 2016 (IO Exhibit 91) and it was announced again at the initial brief on the morning of 14 June 2016 (IO Exhibit 30). Once I arrived on the range around 1230, I learned that there had been confusion about the uniform and Soldiers began the

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day wearing IOTVs. Unit personnel corrected this issue before I arrived, and the vast majority of Soldiers had removed them. The O/C/Ts' statements support this. While I was on the range, I only observed two NCOs wearing their IOTVs, SSG [REDACTED] and SSG [REDACTED]. I asked MAJ [REDACTED] why they were wearing them and he explained that some of the NCO leadership wanted to "train like we fight". 2LT [REDACTED] had heard this too, and believes that is where the confusion in the uniform came from earlier. Later in the day, due to the heat, 2LT [REDACTED] asked if we could postpone the wearing of the IOTVs until the Live Fire iteration. I granted this request.

9. I made a deliberate decision to allow SSG [REDACTED] and SSG [REDACTED] continue wearing their IOTVs. [REDACTED]

[REDACTED] When I heard that A Company NCO leadership was actually trying to "raise the bar" and do something "above and beyond" the requirement, I was actually proud of them. Conversely, I was glad to hear the unit leadership had rectified the situation and Soldiers had downgraded from wearing their IOTVs, but I was proud to hear of their good intentions. Considering that SS [REDACTED] and SSG [REDACTED] are both in excellent physical condition, and are both combat veterans that have worn IOTVs in the desert heat, I allowed them to continue to "lead by example" rather than squashing their initiative. One would have to understand the issues in that unit to fully appreciate my judgement on this decision. In any case, it was a leadership decision made deliberately, not negligently.

10. The IO also highlights there was not adequate water provided for the Soldiers throughout the day. The need to reposition of the water trailer was identified and resolved before I arrived on the range by junior leaders. Until I arrived on the range, I was never made aware of any issues regarding water or hydration. I knew we had resourced the range with a water trailer, a hot meal and fluids to start the day and had planned for resupply. As conditions changed, the unit made appropriate, albeit slower than desired, adjustments. I don't think I should be found negligent for this issue.

11. The IO describes that in spite of 2LT [REDACTED] and SGT [REDACTED] voicing concerns for the safety of the Soldiers due to the heat, and that in spite of multiple heat related injuries, I wanted to continue training. He says we didn't cease training until Range Control decertified the Range OIC and RSO for failure to report the heat casualties. This is incorrect and paints the wrong picture of multiple key events that took place in a very short amount of time. This is perhaps the most important thing to clarify in this rebuttal. I knew I had two heat casualties before the Blank Fire iteration began, Davis and Bautista. SGT [REDACTED] told me they were going to be fine, they were drinking water and

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sitting in an air-conditioned vehicle, cooling off. This is the only time I made the decision to continue training in spite of experiencing heat casualties. I do not believe it was negligent or unreasonable to continue at this point, and neither do three other current or previously successful battalion commanders (Respondent Exhibit B, F, G). When the Blank Fire began, we had some weapons malfunctions and had to cease fire to resolve them. Once we resolved the weapons issues, we resumed the Blank Fire iteration (IO Exhibit 30). It was during this time that SGT Cline succumbed to the heat and walked to the FLA. (IO Exhibit 24, 41) The medics, under direct supervision from MSG Farquharson, an E-8, active duty medic O/C/T, treated him. SGT Cline did not appear to be a medical emergency at this point (IO Exhibit 27, 30, 33, 90). In fact, after he was treated, I observed MSG [REDACTED] leading and coaching them through a thought process of, "You've got 3 patients now, maybe you should consider evacuating them so you could free up capacity. This would be a good time to utilize an AXP." (IO Exhibit 44) MAJ [REDACTED] and 2LT [REDACTED] made some phone calls and coordinated the AXP.

12. Once the AXP was coordinated, MAJ [REDACTED] approached me with 2LT [REDACTED] concerns about the Soldiers' safety if we continue training in these conditions. (IO Exhibit 30, 31, 91) Knowing that there were only 5-10 minutes left in the Blank Fire that was already underway, I decided to finish this iteration, and then we would cease training, send the Soldiers to dinner, and reevaluate after dinner whether or not we should continue with the Live Fire iteration (IO Exhibit 31, 91). It is important to note that 2LT [REDACTED] was not attempting to call a "cease fire" as if he had witnessed an unsafe act that required immediate action. He was making it known that in his opinion the training value we were receiving at this point was not worth the risk we were putting on the Soldiers, and he felt like we should stop. (IO Exhibit 30) I heeded his advice, and we stopped training within minutes. I don't believe the additional 5-10 minutes was negligent and neither did LTC [REDACTED] (Respondent Exhibit B).

13. The Soldiers finished the Blank Fire and gathered at CPT [REDACTED] vehicle for the hot wash before being transported to the bleachers for a hot meal and rest. Therefore, training had stopped within minutes after assessing the third heat casualty, and before Range Control put us in a check fire. During the hot wash, SSG [REDACTED] succumbed to the heat (IO Exhibit 30). The decision was made to evacuate him immediately. Around this same time, SGT Cox got a call on his cell that said SGT Cline's condition was deteriorating, and they decided to take him in the FLA all the way to C Med instead of conducting an AXP. Also around this time 2LT [REDACTED] was talking to Range Control about our three heat casualties. They put us in check fire and informed us that he and SSG [REDACTED] must return to Range Control for retraining before we could continue. (Exhibit 30) I am advised of this at the same SGT [REDACTED] gets another call explaining that SGT Cline is "coding". He advises me of that and explains exactly what "coding" means. Now I had four heat casualties, one that was critical (Cline), and my Range

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OIC and RSO required retraining. There was no need to reevaluate whether we would continue training after dinner. I made the decision to cease training for the day.

14. I called LTC [REDACTED] and informed him I had ceased training for the day and told him about SGT Cline's condition. Since the Soldiers had already moved to the bleachers for dinner, the decision that we were done for the day was not broadcast to them at that time. SGT [REDACTED] got another call that explained SGT Cline had died, and he informed me. I again called LTC [REDACTED] and informed him of SGT Cline. He encouraged me to be careful with the information because we needed to make sure the family was notified before the Soldiers. I relayed this information to CSM Franks and MAJ [REDACTED]. I told them to have the Soldiers finish dinner, clear the range, and return to cantonment, and not to discuss SGT Cline with them. I left the range to go to the hospital. After I left, the armorer succumbed to the heat, bringing our total to five heat casualties. (IO Exhibit 30) The takeaway is that I did not continue training after five heat casualties. I continued after two. It was during the last iteration when SGT Cline and SSG [REDACTED] went down and I made the call to stop. (IO Exhibit 30, Respondent Exhibit B and C)

15. I think it is important to note that many of the unfavorable statements regarding my conduct were voluntarily submitted to the IO by members of Alpha Co within 24 hours of SGT Cline's passing. Many of those statements contained accusations were proven by the IO to be patently untrue. An example are the various statements by A Co that there were no rest cycles. (IO Exhibits 43, 55, 63, & 68) We know this is untrue because every neutral observer (CW2 [REDACTED], O/C/Ts, and Safety NCOs) at the range observed the rest cycles taking place throughout the day.

16. It is not my intent to attack the credibility of any Soldier. However, I must point out that the IO gave statements from A Co great weight, despite their obvious misstatements and the emotional fatigue of losing a battle buddy. Yet he appears to have dismissed the observations of neutral observers such as LTC [REDACTED], CSM [REDACTED], CW2 [REDACTED], and MSG [REDACTED] because they were not on-site all day, even though MSG [REDACTED] was present all day.

17. The O/C/Ts are trained professionals and were present at Range 100 for a reason. They, along with CW2 [REDACTED], had a responsibility to observe the training of units like the 39th, offer guidance and intervene when appropriate. None of them had issues with anything they observed. I respectfully disagree that their observations be found less than persuasive simply because some, not all, were not present for the entire day. I ask that you give their statements and opinions the weight they deserve. (IO Exhibits 25, 26, 27, 28, 92, Respondent Exhibits B, C, D)

18. To this point, I have primarily focused on how we planned and reacted to the hazards of the heat of the day. However, I think it is important to take into account the

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various factors that impacted the amount of time we spent on the range. First, is the training level of the Soldiers prior to conducting this exercise. Besides completing the necessary individual and crew-served weapons qualification and the mandatory Army Warrior Task training that were "training gaits" to conduct this type of exercise, the Soldiers of the 39th BSB had not conducted this type of tactical perimeter defense since 2003 (16 years), therefore the majority of the Soldiers had never done it. To my knowledge, the battalion had never conducted such an event with live ammunition. The battalion conducted an FTX in November 2015 as a "crawl phase" for the establishment of the Brigade Support Area (BSA), and conducted a four-day FTX during the first week of Annual Training 2016. This was an attempt to move from the "crawl phase" to the "walk phase". However, due to complex nature of simply establishing the BSA and conducting logistical operations in a tactical environment, the hot conditions, and limited OPFOR interaction, this training event only gave the Soldiers a very basic understanding of how to react to contact on the perimeter and how to deploy a Quick Reactionary Force (QRF) to assist in repelling the enemy. You could say we were still at a "crawl phase" or maybe a "crawl-plus" phase in our training level.

19. Due to this training deficiency, (Respondent Exhibit J, IO Exhibit 30, 31, 91) the Range leadership required the Soldiers to conduct multiple Dry Fire iterations to simply gain an understanding of what was expected of them on the range. The Platoon and Company leadership understood what was expected, and they briefed the plan effectively to the Soldiers, but the Soldiers simply needed practice. The Range Leadership's concern during these iterations was whether or not the Soldiers would ever get to point where they were confident enough to safely conduct the range with live ammunition. The repetitive Dry Fires, coupled with the heat, also had an effect on the Soldiers' morale. We tried to address this with pep talks following the hot washes between each iteration (IO Exhibit 30, 44). But if the Range Leadership was not satisfied with the Soldiers' level of proficiency during the Blank fire, they would not allow the unit to conduct the Live Fire (IO Exhibit 30) or "run phase" and achieve the purpose of this long day. This is one of the primary reasons I was on the range in the first place. I wanted to see for myself if these Soldiers were going to get to the appropriate level of proficiency, and if they didn't, I wanted to be available to support the Range Leadership in making the difficult decision to cancel the Live Fire Exercise, an event directed by the Brigade Commander. But the point of all this, is that Range Leadership was deliberately trying to ensure the Soldiers could be deemed safe to conduct a Live Fire Exercise. This required multiple Dry Fire iterations and took its toll on the Soldiers in the heat.

20. Other significant distractors that caused us to remain on the range longer than expected were the delays put on us by Range Control when we identified UXOs on the range (IO Exhibit 93), and then lastly the weapons malfunctions we experienced during the Blank Fire. All of these events increased the Soldiers' exposure to the heat. We continually reassessed and changed our control measures to mitigate the heat, but

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these factors contributed to 2LT [REDACTED]'s statement about how the training value we're getting from this is not worth the risk we're putting on the Soldiers. He was correct, and I took his recommendation to cease training once we completed the Blank Fire iteration.

21. The IO has recommended that I be given a letter of reprimand, relieved from my command and be given a relief for cause OER due to negligence and my failures in leadership. As negligence is the departing from the conduct expected of a reasonably prudent person acting under similar circumstances, I truly don't believe I acted in a negligent manner. My actions and decisions were thought-out and deliberate. At no time did I disregard safety concerns or the well-being of my Soldiers. I have attached with this rebuttal the opinion of my peers regarding my actions to illustrate they were in keeping with the expectations of a reasonable commander in a similar situation (IO Exhibit 25, Respondent Exhibit F, G).

22. As I stated in the beginning, I accept responsibility but I do not believe that my actions or the actions of my subordinate leaders meet the definition of negligence. I am certainly willing to appear before you and answer any further questions you have of me, and my witnesses are willing to answer further questions if you or your representative wish to contact them (Respondent Exhibit I). I know that a Soldier has died on my watch and there must be accountability. I trust there is a way to hold me accountable, but not at the expense of my career. I still have much to offer the Arkansas National Guard. Therefore, please consider alternative methods than those recommended by the IO.

Encls

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GIB T. RICHARDSON
LTC, LG, AR ARNG
Commanding

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